40 CFR Part 52

[EPA-R01-OAR-2022-0113; FRL-9656-01-R1]

Air Plan Approval; Connecticut; State Implementation Plan Revisions Required by the 2008 and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of State Implementation Plan (SIP) revisions submitted by the State of Connecticut for purposes of implementing the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQS). The SIP revisions consist of a demonstration that Connecticut meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NOx) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA, or the Act) with respect to the 2008 and 2015 ozone standards. We are also proposing approval of a Consent Order that establishes NOx RACT requirements for facilities operated by NRG Connecticut. Additionally, we are proposing approval of Connecticut's certification that it meets the nonattainment new source review (NNSR) requirements of the CAA for purposes of the 2008 and 2015 ozone standards. This action is being taken in accordance with the CAA.

DATES: Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2022-0113 at *https://www.regulations.gov*, or via email to mcconnell.robert@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment

received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "**FOR FURTHER INFORMATION CONTACT**" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Bob McConnell, Air Quality Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code 05-2), Boston, MA 02109-3912, telephone number (617) 918-1046, email *mcconnell.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ‘‘we,’’ ‘‘us,’’ or ‘‘our’’ is used, we mean EPA. The following outline is provided to aid in locating information in this preamble.

I. Background

On December 21, 2020, the Connecticut Department of Energy and Environmental Protection (CT DEEP) submitted revisions to its SIP to EPA. The SIP revisions consist of information documenting how Connecticut complied with the RACT[1] requirements for the 2015 ozone standard, and a certification that it also meets the RACT requirements for areas classified as serious for the 2008 ozone standard. Connecticut’s submittal includes an order issued by the State that establishes NOx RACT requirements for facilities owned by NRG Connecticut. The State also included within the December 21, 2020, submittal a certification that its SIP meets the requirements for NNSR permitting for purposes of the 2008 and 2015 ozone NAAQS.

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in areas classified as moderate (and higher) non-attainment for ozone, while section 184(b)(1)(B) of the Act requires RACT in states located in the Ozone Transport Region (OTR). Specifically, these areas are required to implement RACT for all major VOC and NOx emissions sources and for all sources covered by a Control Techniques Guideline (CTG). A CTG is a document issued by EPA which establishes a “presumptive norm” for RACT for a specific VOC source category. A related set of documents, Alternative Control Techniques (ACT) documents, exists primarily for NOx control requirements.

[1] RACT is defined as “the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.” (44 FR 53762, September 17, 1979)

States must submit rules, or negative declarations when no such sources exist, for CTG source categories. The ACT documents were issued to help States determine RACT for major sources of NOx, but States do not have to submit negative declarations for ACTs if they have no sources covered by them. However, states must ensure that a RACT level of control is imposed on major sources of NOx, some of which may be within a sector covered by an ACT document.

In 2008, EPA revised the health-based NAAQS for ozone, setting it at 0.075 parts per million (ppm) averaged over an 8-hour time frame. EPA determined that the revised 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors and individuals with a pre-existing respiratory disease such as asthma. On May 21, 2012, EPA published a final rule establishing designations and classifications for the 2008 ozone standard for most areas of the country, including Connecticut (See 77 FR 30088, May 21, 2012). This final rule created two marginal nonattainment areas within Connecticut that together encompass the entire State. The two areas are identified as follows: the Greater Connecticut area, which includes Hartford, Litchfield, New London, Tolland, and Windham counties, and the New York, Northern New Jersey-Long Island NY-NJ-CT area, which includes, within Connecticut, Fairfield, Middlesex, and New Haven counties.

Neither of Connecticut's 2008 NAAQS nonattainment areas were able to meet the marginal area attainment date, and so on May 4, 2016, EPA published a final rule that revised the classifications of Connecticut's and other state's nonattainment areas from marginal to moderate (See 81 FR 26697, May 4, 2016). Subsequently, Connecticut's two moderate nonattainment areas also failed to meet the moderate area attainment date, and so on August 23, 2019, EPA published a final rule that revised the classifications of Connecticut's, and other state's nonattainment areas, from moderate to serious (See 84 FR 44238, August 23, 2019).

On March 6, 2015, EPA published a final rule in the *Federal Register* that outlined the obligations that areas found to be in nonattainment of the 2008 ozone standard needed to address (See 80 FR 12264, March 6, 2015). This rule, herein referred to as the "2008 ozone implementation rule," contained, among other things, a description of EPA's expectations for states with RACT and NNSR obligations. Regarding RACT, the 2008 ozone implementation rule indicated that states could demonstrate that controls representing RACT were in place through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIP approved by EPA under a prior ozone NAAQS represent adequate RACT control levels for attainment of the 2008 ozone NAAQS, or with a combination of these two approaches. In addition, a state must submit a negative declaration in instances where there are no CTG sources within its borders.

Regarding the 2015 ozone NAAQS, on June 4, 2018, EPA published a final rule establishing designations and classifications for this standard for most areas of the country, including Connecticut (See 83 FR 25776, June 4, 2018). This final rule created a marginal and a moderate nonattainment area within Connecticut that together encompass the entire State, identified as follows: the Greater Connecticut marginal area, which includes Hartford, Litchfield, New London, Tolland, and Windham counties, and the New York, N. New Jersey-Long Island NY-NJ-CT moderate area, which includes, within Connecticut, Fairfield, Middlesex, and New Haven counties. Additionally, on December 6, 2018, EPA published a final rule outlining requirements for states to follow as they implement the 2015 ozone NAAQS (See 83 FR 62998, December 6, 2018). The December 6, 2018, final rule is herein referred to as the 2015 ozone implementation rule. It contains RACT and NNSR requirements similar to those outlined within the 2008 ozone implementation rule, although the discretionary inter-pollutant trading program

provided for within the NNSR portion of the rule was subsequently voided as noted below.

Regarding NNSR, the minimum SIP requirements for NNSR permitting programs for the 2008 and the 2015 ozone NAAQS are located in 40 CFR 51.165. These NNSR program requirements include those promulgated in the "Phase 2 Rule" implementing the 1997 8-hour ozone NAAQS (See 70 FR 71612, November 29, 2005) and the 2008 ozone implementation rule. Additionally, although the 2015 ozone implementation rule included a provision to explicitly allow for inter-pollutant trading for meeting the emissions offset requirement for ozone, this provision was subsequently vacated.[2] Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: set major source thresholds for NO_X and VOC pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*) through (*iv*) and (a)(1)(iv)(A)(*2*); classify physical changes at a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(3); consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider increases of VOC emissions in extreme ozone nonattainment areas as significant net emissions increases and major modifications for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOC and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A) through (C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*) and (*2*); provide that the requirements applicable to VOC also apply to NO_X pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOC and NO_X pursuant to 40 CFR 51.165(a)(9)(i) through (iii) (renumbered as (a)(9)(ii) through (iv) under the 2008 ozone implementation rule). Additionally, pursuant to the 2008 ozone implementation rule, areas designated as

[2] *Sierra Club v. EPA*, 985 F.3d 1055 (D.C. Cir. 2021)

nonattainment for that standard that also remain nonattainment for the 1997 ozone standard must satisfy the anti-backsliding requirements of 40 CFR 51.1105.

II. Summary and Evaluation of Connecticut's SIP Revisions

a. RACT Certifications and Consent Order No. 8377

On December 21, 2020, Connecticut submitted a demonstration that its regulatory framework for stationary sources meets the criteria for RACT as defined in EPA's 2015 ozone implementation rule. The submittal also contained a certification that the State's RACT requirements for the 2008 ozone NAAQS that EPA approved on July 31, 2017 when the State was classified as moderate continue to meet the RACT standard for areas classified as serious, as Connecticut became pursuant to EPA's August 23, 2019, final rule mentioned above (See 82 FR 35454, July 31, 2017). Connecticut's RACT submittal notes that its prior designation as a nonattainment area for the 1979, 1997, and 2008 ozone standards resulted in the adoption of stringent controls for major sources of VOC and NOx, including RACT level controls. Connecticut's major source applicability threshold for both VOC and NOx have been maintained at 50 tons per year except for the portion of the state designated as severe for the one-hour ozone standard (portions of Fairfield and Litchfield counties (See 56 FR 56694, November 6, 1991) where the threshold is 25 tons per year). In accordance with the 2008 and 2015 ozone implementation rules, much of Connecticut's submittal consists of a review of RACT controls adopted under previous ozone standards and an indication of whether those previously adopted controls still represent RACT for the 2008 and 2015 ozone NAAQS. Additionally, Connecticut notes that as a member state of the OTR, it works with the Ozone Transport Commission to identify and adopt, as deemed appropriate, regulations on additional VOC and NOx categories beyond those for which EPA has issued CTGs or ACT documents.

Regarding VOC RACT, the State's December 21, 2020, submittal identifies the specific control measures that had been previously adopted to control emissions from major sources of VOC emissions and reaffirms negative declarations for some CTG categories. Table 3 of Connecticut's submittal contains a summary of the previously adopted measures for each of the CTG categories. The table identifies the specific state rule, where relevant, that is in place, the date of state adoption, and the date that EPA approved the rule into the Connecticut SIP. Table 3 also indicates the CTGs for which the state makes a negative declaration due to no sources existing within the State for the sector covered by that CTG. Connecticut notes that the following regulations are the principal means by which stationary sources of VOC emissions are controlled, the first being Regulations of Connecticut State Agencies (RCSA) section 22a-174-20, Control of Organic Compound Emissions, the second being RCSA section 22a-174-32, Reasonably Available Control Technology (RACT) for Volatile Organic Compounds, and the third being RCSA 22a-174-30a, Stage I Vapor Recovery. These rules are generally applicable to sources with the potential to emit 50 tons or more of VOCs per year, except that in portions of the State classified as a severe nonattainment area under the 1-hour ozone standard these rules are applicable to sources with the potential to emit 25 tons or more per year. Additionally, for some CTG categories such as surface coating sources, Connecticut's rules include lower applicability thresholds consistent with the recommended applicability level of the relevant CTGs.

As required, Connecticut's submittal addresses NO_X emissions as well as VOC emissions. In particular, the submittal's Table 4 lists all major sources of NO_X (and VOC) in the State and identifies the NOx control regulation governing each source. Connecticut notes that all facilities in the State with the potential to emit 50 tons or more of NO_X per year (or 25 tons in the portions of Fairfield and Litchfield counties noted above) are subject to RCSA section 22a-174-22e, "Control of Nitrogen Oxide Emissions

from Fuel Burning Equipment at Major Stationary Sources of Nitrogen Oxides." Connecticut also subjects some non-major sources of NOx to emission limits via requirements within RCSA 22a-174-22f, High Daily NOx Emitting Units at Non-major Sources of NOx. In addition, RCSA section 22a-174-38, Municipal Waste Combustors, regulates NO_X emissions from Connecticut's MWCs, which are currently the largest NOx emitting sector in the State. Connecticut reviewed these regulations and determined that they did not need to be updated to represent RACT for the 2008 and 2015 ozone NAAQS given recent updates to both regulations that EPA approved into the Connecticut SIP. Connecticut submittal did include updates to NOx emission limits for some major sources of NOx, specifically, those owned and operated by the State's largest electric utility, NRG Connecticut. Those requirements are contained within Consent Order No. 8377 which the State issued to NRG Connecticut on March 10, 2020, and which Connecticut included within its December 21, 2020, SIP revision request.

Connecticut's review of its control program for major sources of VOC and NOx thus concludes that all major sources in the State are subject to RACT meeting the requirements of the 2008 and 2015 ozone standards.

EPA has reviewed and agrees with Connecticut's determination that it has adopted VOC and NOx control regulations for stationary sources that constitute RACT and determined that the set of regulations cited by the State within its December 21, 2020, RACT certification SIP submittals, along with the NOx control requirements for equipment owned and operated by NRG Connecticut, constitute RACT for purposes of the 2015 ozone standard and continue to represent RACT for the 2008 ozone standard. The rationale for our determination is provided below.

Connecticut's RACT certification submittals document the State's VOC and NO_X control regulations that have been adopted to ensure that major sources are subject to RACT level controls in the State. These requirements include the following

Regulations of Connecticut State Agencies: section 22a-174-20, Control of Organic Compound Emissions; section 22a-174-22e, Control of Nitrogen Oxide Emissions from Fuel Burning Equipment at Major Stationary Sources of Nitrogen Oxides; section 22a-174-30a, Stage I Vapor Recovery; section 22a-174-32, RACT for Organic Compound Emissions; and 22a-174-38, Municipal Waste Combustors. Two of these regulations, sections 22a-174-22e and 22a-174-38, contain recently strengthened NOx emissions limits that EPA has approved into the Connecticut SIP (See 82 FR 35454, July 31, 2017). Connecticut's RACT certification submittal notes that it has adopted numerous single source RACT orders for major sources of VOC and NOx that are not covered by one of EPA's CTGs or ACTs, and these orders have been submitted to EPA and incorporated into the SIP, as have individual orders providing for NOx trading among facilities within the State as authorized by section 22a-174-22e (g) of Connecticut's regulations.

The State's submittal documents a substantial downward trend in ozone exceedance days between 1975 and 2019, much of which is attributable to the control measures put in place by Connecticut and federal control measures adopted since the early 1990s pursuant to the Clean Air Act amendments of 1990. Connecticut's submittal also documents a substantial decline of 63 percent in NOx emissions from major stationary sources between 2002 and 2017. Furthermore, data from EPA's National Emissions Inventory (NEI) database indicates that between 2008 and 2017 VOC emissions from stationary point sources emitting 5 tons per year or more declined by 15%. In 2017, the State's major VOC sources emitted less than 1 percent of Connecticut's total anthropogenic VOC emissions, and only 6 individual facilities emitted more than 50 tons that year.

We last approved a RACT certification SIP for Connecticut on July 31, 2017 for the 2008 ozone standard (See 82 FR 35454, July 31, 2017). That action included approval of a SIP revision that consisted of a comprehensive update of the State's NOx

control requirements. Specifically, the revision included the regulatory changes that Connecticut determined were necessary after evaluating its RACT requirements for boilers, turbines, and reciprocating internal combustion engines (RICE). The submittal included two new regulations, RCSA 22a-174-22e, Control of nitrogen oxide emissions from fuel-burning equipment at major stationary sources of nitrogen oxides and 22a-174-22f, High daily NOx emitting units at non-major sources of NOx. Section 22a-174-22e has reduced NOx emissions via "Phase 1" requirements that became effective on June 1, 2018 and will reduce emissions further when more stringent "Phase 2" limits take effect on June 1, 2023. Given the later compliance date, Connecticut did not rely on the Phase 2 requirements as part of its RACT certification as a moderate area for the 2008 ozone standard. Rather, the Phase 2 limits, which are among the most stringent limits adopted by any state in the Northeast, were adopted then to provide lead time for sources subject to Phase 2 limits to plan for the financial and logistical aspects of meeting these strengthened limits. Our July 31, 2017, approval contains a description of the Phase 1 and Phase 2 NOx emission limits Connecticut adopted for boilers, turbines, and RICE units. Connecticut's submittal indicates the State explored other possible control measures that might qualify as a RACT measure or measures needed for attainment, and additionally considered measures that might qualify as a RACT measure or measures not tied to attainment but could not identify measures that would fit in either category.

In addition to the requirements mentioned above, our July 31, 2017, action also approved Connecticut's newly adopted RCSA section 22a-174-22f, High Daily NOx Emitting Units at Non-major Sources of NOx. This regulation requires owners of equipment at small and medium-sized "non-major" sources to track daily emissions during the ozone season and take steps to reduce emissions if they exceed a certain level of NOx emissions. Connecticut was not obligated by CAA requirements to adopt a regulation for these sources to meet RACT since they are not major sources. The rule

will, however, strengthen the State's overall regulatory program for sources of NOx and help the State in its efforts to attain the ozone NAAQS.

Connecticut's December 21, 2020, submittal included Consent Order No. 8377 which the State issued to Connecticut Jet Power LLC, Devon Power LLC, Middletown Power LLC, and Montville Power LLC (collectively referred to as NRG Connecticut) on March 10, 2020. The Order establishes case-by-case NOx RACT emission limits for five distillate-fired 20-megawatt (MW) turbines, identified as Devon 10, Middletown 10, Branford 10, Torrington Terminal 10, and Franklin Drive 10, two diesel-fired 2.75 MW engines identified as Montville 10 and Montville 11, and for three boilers identified as Middletown Unit 4, Montville Unit 5 and Montville Unit 6. Connecticut issued Order No. 8377 in accordance with RCSA Section 22a-174-22e (h). The RACT limits within the Order are for Phase 2 of Connecticut's NOx RACT requirements, which become applicable on June 1, 2023. The seven engines and turbines are infrequently run units, running on average less than 25 hours per year based on data from 2014 through 2018. NRG Connecticut demonstrated to the Connecticut DEEP that installing and operating NOx controls on this equipment was not technically or economically feasible. Section 22a-174-22e (h)(1)(C) requires that sources applying for a case-by-case RACT determination demonstrate a net air quality benefit will occur if the request is granted. Consent Order No. 8377 accomplishes this in two ways, first, by requiring that NRG Connecticut install new synthetic non-catalytic reduction (SNCR) NOx controls on the three boilers under its control mentioned above. These three boilers will reduce their emissions beyond their respective NOx emission limits during the Phase 1 control period, which runs from June 1, 2018 through May 31, 2023. Additionally, Consent Order No. 8377 requires the company to retire 250 banked Discrete Emission Reduction Credits (DERCs).

Connecticut's submittal also addresses RACT for sources of VOCs. Prior to the CAA Amendments of 1990, VOC control strategies were the primary means by which ground level ozone was reduced. Accordingly, beginning in the 1970's EPA issued Control Technique Guidelines (CTGs) for many industries that use VOCs. The CTGs provide an overview of emission sources and control options and establish presumptive levels of control. Given this, Connecticut has a long history of adopting regulations to limit VOC emissions from within the State. Table 3 of Connecticut's December 21, 2020 submittal lists the name and issue date of all of EPA's CTGs, an indication of whether or not facilities in the CTG category exist in Connecticut, the date and Federal Register citation for EPA's approval of regulations Connecticut adopted to meet the requirements of the CTG, and a comments column that, among other things, identifies the CTGs for which the State makes a negative declaration affirming no sources exist within the State that would be covered by the CTG. We are proposing approval of negative declarations Connecticut makes for the following CTG categories: Automobile coatings, Large petroleum dry cleaners, Fiberglass boat manufacturing, Equipment leaks from natural gas and gasoline processing plants, the Oil and natural gas industry, Control of refinery vacuum producing systems, wastewater separators and process unit turnarounds, Control of VOC leaks from petroleum refinery equipment, and Flatwood paneling coatings. Connecticut reviewed the inventory information, interviewed field staff, and searched telephone and internet webpages, including other state government databases, to confirm that no facilities exist in the State that are covered by the above mentioned CTG categories.

We have reviewed Connecticut's RACT certification demonstration and determined that the State's regulatory requirements and the resulting reduction in VOC and NO_X emissions from major sources that they accomplish demonstrate that a RACT level of control for both pollutants are in place. Since we agree that the VOC and NOx

stationary source control regulations which Connecticut has cited as meeting RACT do conform with RACT for the 2015 and 2008 ozone standards, we propose approval of Connecticut's December 21, 2020, RACT certification SIP revision requests.

b. NNSR Certifications

Connecticut's longstanding SIP-approved NNSR program, established in RCSA sections 22a-174-1 (definitions), and 22a-174-3a (applicability and substantive requirements) applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas. In Connecticut's December 21, 2020, SIP revision, the State certifies that the version of RCSA Sections 22a-174-1 and 22a-174-3a in the current SIP meet the federal NNSR requirements for both ozone nonattainment areas within Connecticut. EPA last approved revisions to the SIP-approved version of Connecticut's NNSR rule in 2015[3] addressing, among other things, the NNSR requirements that apply when a major source or major modification causes a significant impact in an area that is violating the $PM_{2.5}$ ambient air quality standard. In Connecticut's certification, the State provides a side-by-side comparison demonstrating the State's Rules are at least as stringent as EPA's nonattainment new source review permitting program requirements.

As discussed above, on August 23, 2019, EPA published a final rule that reclassified both nonattainment areas in Connecticut from moderate to serious nonattainment for the 2008 ozone NAAQS. For the 2015 ozone NAAQS, the Greater Connecticut nonattainment area is classified as marginal and the Connecticut portion of the New York-Northern New Jersey-Long Island area is classified as moderate (See 83 FR 25776, June 4, 2018).

Connecticut's SIP-approved NNSR regulation retains the NNSR requirements applicable to serious and severe nonattainment areas. The State's SIP-approved NNSR

[3] See 80 FR 43960, July 24, 2015.

regulation defines the term “Severe nonattainment area for ozone” as including the cities and towns in portions of Fairfield and Litchfield counties that were historically part of the severe New York-N. New Jersey-Long Island, NY-NJ-CT ozone nonattainment area designated for the one-hr ozone NAAQS. The term “Serious nonattainment area for ozone” is defined to include “all towns within the State of Connecticut, except those towns located in the severe non-attainment area for ozone.” This is the portion of the State that was historically part of the serious Greater Connecticut nonattainment area designated for the one-hr ozone NAAQS. The SIP's definition of “Major stationary source” then uses these terms to define the NOx and VOC emission thresholds when determining if a source is major for ozone. The SIP's major stationary source threshold for NOx and VOC in a “Severe nonattainment area for ozone” is 25 tons per year. The SIP's major stationary source threshold for NOx and VOC in a “Serious nonattainment area for ozone” is 50 tons per year. These thresholds for NOx and VOC are consistent with EPA regulations and with CAA major source thresholds for ozone nonattainment areas.

Connecticut's NNSR SIP also properly addresses the thresholds for NOx and VOC, as precursors to ozone, in the definition of “Major modification” by establishing the threshold for either of these ozone precursors at 25 tons per year in severe non-attainment areas and 50 tons per year in serious non-attainment areas. These thresholds for a major modification are consistent with EPA regulations. Lastly, since Connecticut's NNSR SIP retains its previously approved major source thresholds, the State's SIP meets the anti-backsliding requirements.

III. Proposed Action

EPA is proposing approval of Connecticut’s December 21, 2020, SIP submittals that demonstrate that the State has adopted air pollution control strategies that represent RACT needed for attainment and RACT not tied to attainment for purposes of

compliance with the 2008 and 2015 ozone standards. Additionally, we are proposing approval of Consent Order No. 8377 containing NOx RACT requirements for facilities operated by NRG Connecticut, and negative declarations for CTG categories for which Connecticut asserts no facilities exist within its borders.

We are also proposing to approve Connecticut's December 21, 2020, SIP revision request addressing the NNSR requirements for the 2008 and 2015 ozone NAAQS for both nonattainment areas in the State. The approval also includes the applicable NNSR provisions of Connecticut's regulations that satisfy the CAA's anti-backsliding requirements. We have concluded that the State's submission fulfills the 40 CFR 51.1114 revision requirement and meets the requirements of CAA section 110 and the minimum SIP requirements of 40 CFR 51.165.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this *Federal Register.*

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following item that the Connecticut DEEP submitted to EPA for incorporation into the Connecticut SIP by letter dated December 21, 2020: Consent Order No. 8377 containing NOx RACT requirements for facilities operated by NRG Connecticut. The EPA has made, and will continue to make, this document generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 18, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

[FR Doc. 2022-06206 Filed: 3/24/2022 8:45 am; Publication Date: 3/25/2022]